

## Message Text

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ACTION EB-07

INFO OCT-01 ARA-06 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

DOTE-00 INR-07 NSAE-00 CIEP-01 FAA-00 L-03 TRSE-00

NSC-05 SS-15 /047 W

-----101750Z 125446 /43

R 101640Z JAN 77

FM AMEMBASSY BRASILIA

TO SECSTATE WASHDC 9513

INFO AMCONSUL RIO DE JANEIRO

AMCONSUL SAO PAULO

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EO 11652 NA

TAGS: EAUR, BR

SUBJECT: AVIATION FUEL CHARGES

REF. (A) BRASILIA 10618, (B) SECSTATE 305724 (C) BRASILIA 0161

1. PURSUANT REFTEL (A), (PARA 6), COUNSELOR ECON/COMMERCIAL  
RAISED AVIATION FUEL CHARGES WITH AMBASSADOR CABRAL DE MELLO,  
CHIEF OF FOREIGN MINISTRY'S ECONOMIC DEPARTMENT, JANUARY 6.  
OFFICER SAID USG WAS PLEASED BY REMOVAL OF FUEL TAX ON NON-SCHEDULED  
AIRLINES, HOPED THAT THIS REMOVAL REMAINED IN FORCE, BUT WAS  
GREATLY CONCERNED OVER THE IMPOSITION OF A NEW VERY SUBSTANTIAL  
CHARGE ON FUEL FOR AIRLINE OPERATIONS WHICH MIGHT COST US AIRLINES  
OVER ONE MILLION DOLLARS ANNUALLY.

2. COUNSELOR SAID US CONCERN COULD BE SUMMARIZED UNDER THREE  
POINTS.

A. IF THE NEW "ALINEA M" CHARGE WAS A TAX, THIS RAISED LEGAL  
PROBLEMS, SUCH AS CONFLICTS WITH EXISTING AGREEMENTS AND, INDEED,  
BRAZILIAN LEGISLATION (BRAZILIAN LAW 1815, ARTICLE 8).

WE RECOGNIZED THAT THE QUESTION OF WHETHER "ALINEA M" WAS A TAX  
OR A FEE REMAINED MOOT ALTHOUGH IT SEEMED TO US, EVEN

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AT THIS JUNCTURE, THAT IT PROBABLY WAS A TAX. IT EVIDENTLY  
COULD NOT BE A USER FEE SINCE THE AVIATION FUND, AS WE  
UNDERSTOOD IT, WAS FOR THE IMPROVMENT OF DOMESTIC AIRPORTS  
ONLY. ALSO, THE PROCEEDS WERE BEING PAID INTO THE SAME ACCOUNT  
AS THE PREVIOUS FUEL TAX.

B. IRRESPECTIVE OF WHETHER A TAX OR A FEE, THE NEW

"ALINEA M" CHARGE SERIOUSLY REDUCED THE ECONOMIC VALUE OF THE ROUTES PROVIDED TO US CARRIERS UNDER EXISTING AGREEMENTS. PARTICULARLY COMING ON TOP OF THE VARIOUS MEASURES TAKEN BY BRAZIL TO CONSTRAIN TRAVEL, IT WAS A SERIOUS FINANCIAL SETBACK TO THE US CARRIERS WHICH WOULD HAVE NO COMPENSATORY REVENUE INCREASES.

C. WE WERE CONCERNED THAT THIS NEW DOMESTIC MEASURE HAD BEEN TAKEN SO SUDDENLY, WITHOUT ANY PRIOR NOTICE, WHILE CONSULTATIONS WERE IN PROGRESS ON THE FUEL TAX LEVY.

D. WE, THEREFORE, HOPED THE NEW CHARGE WOULD BE RESCINDED OR AT LEAST, ASSUMING IT COULD BE ESTABLISHED THAT "ALINEA M" WAS NOT A TAX IN LEGAL TERMS, BE SUBSTANTIALLY REDUCED.

3. CABRAL DE MELLO DID NOT RESPOND DIRECTLY TO THE PRESENTATION BUT WONDERED WHETHER THERE WAS AN AIRLINE COMMITTEE IN RIO AND WHAT ACTION IT WAS PLANNING TO TAKE. ECON COUNSELOR SAID WE UNDERSTOOD THE COMMITTEE WAS CONSIDERING THE POSSIBILITY OF COURT ACTION TO CONTEST THE LEGALITY OF THE MEASURE, ALTHOUGH WE HAD THE IMPRESSION SOME COUNTRIES MIGHT PREFER TO AVOID A LEGAL CHALLENGE TO THE BRAZILIAN AUTHORITIES AND DO THE BULK OF THEIR REFUELING OUTSIDE BRAZIL INSTEAD.

4. COMMENT: ALTHOUGH CABRAL DE MELLO CLAIMED NOT TO BE FAMILIAR WITH THE ISSUE, HE WAS WELL BRIEFED ON ITS ESSENTIALS. THE IMPRESSION HE CONVEYED WAS THAT THE GOB IS AWAITING THE AIRLINE GROUP'S DECISION ON WHETHER LIMITED OFFICIAL USE

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TO CHALLENGE THE MEASURE IN THE COURTS. HE SEEMED TO BE AWARE OF THE HESITANCY IN THE COMMITTEE TO TAKE SUCH A STEP. CABRAL DE MELLO SEEMED TO AGREE THAT RETRO-GRESSION ON THE NON-SCHEDULED AIRLINES FUEL TAX ISSUE WAS TOO SERIOUS A STEP TO BE CONSIDERED BY THE GOB.  
CRIMMINS

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NNN

## Message Attributes

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**Disposition Approved on Date:**  
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**Disposition Date:** 22 May 2009  
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**Original Handling Restrictions:** n/a  
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**Review Markings:**  
Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
22 May 2009  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009